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APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR AUTHORITY TO CHANGE RATES	§ § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS INDUSTRIAL ENERGY CONSUMERS' REPLY TO EXCEPTIONS TO PROPOSAL FOR DECISION

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GLOSSARY OF ACRONYMS

ADFIT	Accumulated Deferred Federal Income Taxes
AEP	American Electric Power
ALJ	Administrative Law Judge
CARD	Cities Advocating Reasonable Deregulation
CLECO	Cleco Power LLC
CoL	Conclusion of Law
DCF	Discounted Cash Flow
DHPS	Dolet Hills Power Station
ERCOT	Electric Reliability Council of Texas
FERC	Federal Energy Regulatory Commission
FoF	Finding of Fact
GAAP	Generally Accepted Accounting Principles
GCRR	Generation Cost Recovery Rider
LLP	Large Lighting and Power
MW	Megawatt, a unit of power
MWh	Megawatt-Hour, a unit of energy
NBV	Net Book Value
NITS	Network Integration Transmission Service
NOLC	Net Operating Loss Carryforward
O&M	Operations and Maintenance
OP	Ordering Paragraph
PFD	Proposal For Decision
PTYA	Post-test-year-adjustments

PUC, or the "Commission"	Public Utility Commission of Texas
PURA	Public Utility Regulatory Act, Tex. Util. Code §§ 11.001 *et seq.*
REC	Renewable Energy Credit
ROE	Return On Equity
S&P	Standard & Poor's
SPP	Southwest Power Pool
SWEPCO	Southwestern Electric Power Company
TIEC	Texas Industrial Energy Consumers
WACC	Weighted-Average Cost of Capital

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TEXAS INDUSTRIAL ENERGY CONSUMERS' REPLY TO EXCEPTIONS TO PROPOSAL FOR DECISION

I. INTRODUCTION

The Proposal for Decision (PFD) would award SWEPCO a net $41 million base rate increase,[1] which comes on the heels of the $50 million increase SWEPCO received in its last rate case.[2] The PFD's recommendation in this case would result in more than an 11% increase over SWEPCO's present revenues,[3] and SWEPCO would recover additional revenues from ratepayers through the Dolet Hills rider.[4] The Commission should thus take SWEPCO's sometimes vigorous complaints regarding the opportunity to earn a reasonable return, and just and reasonable rates,[5] with a large helping of salt. Indeed, many of SWEPCO's Exceptions to the Administrative Law Judges' (ALJs') thorough PFD are unsupported, contrary to Commission precedent, or both. TIEC addresses several of SWEPCO's points below and respectfully requests that the Commission deny SWEPCO's Exceptions on these issues.

V. RATE BASE/INVESTED CAPITAL

A. Transmission, Distribution, and Generation Capital Investment

1. Retired Gas-Fired Generation Units

The ALJs correctly recommend that the Commission allow SWEPCO to earn a return of,

[1] PFD at Schedule C.

[2] *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing at 1 (Mar. 19, 2018); Staff Ex. 47 (official notice).

[3] PFD at Schedule C.

[4] *Id.* at FoFs 58-60.

[5] *E.g.*, SWEPCO's Exceptions at 15.

but not on, the undepreciated investment in its retired gas plants.[6] The ALJs' decision is in keeping with Commission precedent and reflects a balanced approach with respect to plants that no longer provide service. SWEPCO's Exceptions on this issue should be denied.

Contrary to SWEPCO's contentions,[7] under the Public Utility Regulatory Act (PURA) a utility may earn a return only on invested capital that is "***used and useful*** in providing service to the public."[8] Similarly, the Commission's Rules state that a major component of rate base is "[o]riginal cost, less accumulated depreciation, of electric utility plant ***used by and useful to*** the electric utility" in providing service.[9]

Commission precedent is in alignment with PURA and the Commission's Rules. In Docket No. 46449, the Commission evaluated SWEPCO's retired Welsh Unit 2 plant and found that it was no longer used and useful.[10] While SWEPCO requested a return of and on the remaining undepreciated balance of the plant, SWEPCO was not permitted to earn a return on the plant because it was no longer used and useful.[11] The Commission also expressly found that this treatment "balances the interests of ratepayers and shareholders with respect to a plant that no longer provides service."[12] Notably, the Commission's treatment of Welsh Unit 2 was not based on a finding that SWEPCO was imprudent in retiring the plant—to the contrary, the Commission expressly found that SWEPCO had acted prudently in that regard.[13] The ALJs were right to recommend that the Commission adhere to its precedent reflected in Docket No. 46449 in this case.

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[6] PFD at 21, 25.

[7] SWEPCO's Exceptions at 7 ("the statute is silent regarding a return afforded to an investment in a generation facility that the Commission views as no longer used after retirement, other than requiring the Commission permit recovery of the 'utility's reasonable and necessary operating expenses.'").

[8] PURA § 36.051 (emphasis added).

[9] 16 T.A.C. § 25.231(c)(2)(A) (emphasis added).

[10] Docket No. 46449, Order on Rehearing at FoFs 65-66 (Mar. 19, 2018).

[11] *Id.* at FoF 68.

[12] *Id.* at FoF 69.

[13] *Id.* at FoF 64.

In arguing against Commission precedent, SWEPCO raises many of the same faulty points[14] that the Commission rejected in Docket No. 46449 and that the PFD rejects in this case, including that a return on the retired plants is required by FERC accounting guidelines.[15] But "[a]ccounting does not determine the appropriate ratemaking treatment [of a retired plant]. The statutory framework determines ratemaking treatment. To earn a return, an asset must be both used and useful."[16]

SWEPCO also argues that Welsh Unit 2 was not the first generating plant to be retired with some undepreciated value, but it fails to identify a single case in which the Commission made a finding that a utility should earn a return on the undepreciated balance of a retired plant.[17] Instead, SWEPCO points to the ratemaking treatment of Lieberman Unit 1 in Docket No. 46449.[18] However, SWEPCO provides no support for how Lieberman Unit 1 was treated in that case.[19] Nor does SWEPCO provide any information about the circumstances or treatment of Lieberman Unit 1, such as the magnitude of the undepreciated balance.[20] Moreover, the issue of the proper ratemaking treatment of Lieberman Unit 1 was not raised in that proceeding; SWEPCO did not explicitly request a return on its remaining balance—as it did for Welsh Unit 2[21]—and the PFD and Final Order did not even mention the remaining balance of Lieberman Unit 1.[22] The Commission's silence on an issue that was never raised in Docket No. 46449 does not lend support to SWEPCO's claim that Welsh Unit 2 was treated in a unique manner that makes precedent from that docket inapplicable to this proceeding.

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[14] *See* SWEPCO's Exceptions at 5-6.

[15] PFD at 23; Docket No. 46449, Order on Rehearing at 94; Docket No. 46449, PFD at 87-88, 93-94 (Sep. 22, 2017).

[16] Docket No. 46449, PFD at 94.

[17] SWEPCO's Exceptions at 6.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] Docket No. 46449, PFD at 87, n. 293 (citing SWEPCO's then-CEO Venita McCellon-Allen's direct testimony for the proposition that "SWEPCO proposes to record this retirement by crediting Plant in Service with the original cost of Welsh Unit 2 and debiting Accumulated Depreciation with the same amount").

[22] *See generally* Docket No. 46449, PFD; Docket No. 46449, Order on Rehearing. The only mention of the Lieberman Units in the PFD was for an unrelated issue having to do with an adjustment to normalize test-year production maintenance expense. Docket No. 46449, PFD at 198.

As the PFD recognized, "the clear import of the Commission's holdings and reasoning [in Docket No. 46449] regarding Welsh Unit 2 is that 'the interests of ratepayers and shareholders with respect to a plant that no longer provides service' are properly balanced by '[a]llowing [the utility] a return on, but not of, its remaining investment' in that plant."[23] This recent precedent should govern this case, not other states' orders that were made without regard to Texas's laws[24] or SWEPCO's reading of a case from 1997 involving a utility's recovery of investment that exceeds market value (ECOM) in the unbundling/stranded cost context.[25] Docket No. 14965 did not address how to treat a retired plant that is no longer used and useful because it is our of service.[26] The Order in that case states: "ECOM exists in CPL's *currently functioning generation units, that it uses to generate the power* it needs to serve customers, while maintaining an appropriate reserve."[27] But SWEPCO's plants at issue are retired; they are not useful at all. This makes the Commission's treatment of ECOM in the context of a shift to a competitive environment in Docket No. 14965 an inapt comparison to the instant case.

The more recent precedent from Docket No. 46449, however, is directly applicable to the case at hand. Notably the Commission's treatment of Welsh Unit 2 in that case is also consistent with the Commission's treatment of plants that were canceled during their construction, which are similar to retired plants in that the investment is not used and useful. Under Commission precedent, a utility is only permitted to recover its prudently incurred investment in a canceled plant—not to also earn a return on that investment.[28]

The Commission's prescribed treatment for retired plants outlined in Docket No. 46449 and the ALJs' recommendation in this case strikes an equitable balance between ratepayers and

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[23] PFD at 24; Docket No. 46449, Order on Rehearing at FoF 69.

[24] SWEPCO's Exceptions at 7-8.

[25] *See* generally *Application of Central Power and Light Company for Authority to Change Rates*, Docket No. 14965, Second Order on Rehearing (Oct. 16, 1997).

[26] Docket No. 14965, PFD at 465-466 (Jan. 21, 1997); *See* also Docket No. 14965, Second Order on Rehearing at 1-5.

[27] Docket No. 14965, Second Order on Rehearing at FoF 364 (emphasis added).

[28] *E.g.*, *Application of Gulf States Utilities Company for a Rate Increase*, Docket No. 5560, Revised Examiners' Report, 1984 WL 274017 at *20 (July 13, 1984) ("Thus, the general rule in Texas regarding plant cancellations is that if the utility demonstrates that it acted prudently in planning and managing the project, the cost of service amortization of the loss over some future period is allowed but return on unamortized balances is disallowed.").

shareholders by recognizing that shareholders should recover their investment, but also that it is not just or reasonable for ratepayers to pay a return on plant that is no longer used or useful in serving them. The Commission should continue to follow statute and its own precedent by denying a recovery on the undepreciated value of retired plants that are no longer used and useful.

2. Dolet Hills Power Station Retirement

- **Introduction and background**

In May 2020, SWEPCO announced that Dolet Hills, a 650 MW lignite plant it jointly owns with Cleco Power LLC (CLECO), will be retired no later than December 2021, fully 25 years earlier than its previously established retirement date of 2046.[29] Five months later, SWEPCO filed this rate case, seeking to recover the entire $45.4 million (Texas retail) Dolet Hills undepreciated balance from ratepayers in only four years. As SWEPCO's president confirmed at the hearing, the retirement of Dolet Hills plant is part of a national plan of American Electric Power's to retire coal-fired plants and replace them with renewable or natural gas plants.[30] Accordingly, additional early retirements of coal/lignite plants and related assets are in the offing.[31]

SWEPCO's proposal to deal with the early retirement begins with immediately offsetting the $45.4 million remaining balance of Dolet Hills with SWEPCO's excess ADFIT balance of $39 million.[32] To be clear, the excess ADFIT balance accrued as a result of the Tax Cuts and Jobs Act and not as a result of Dolet Hills being retired,[33] and it would be refunded to ratepayers regardless of whether it is used to offset Dolet Hills.[34] Under the second step of SWEPCO's proposal, SWEPCO would amortize the remaining $6.4 million balance over four years with a return (despite the fact that the plant will cease being used and useful in December 2021).[35] At the same time, rates would be set to continue recovering SWEPCO's test-year level O&M expense, insurance

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[29] TIEC Ex. 4, Direct Testimony and Exhibits of Billie S. LaConte Dir. at 5 (LaConte Dir.). All citations to Ms. LaConte's testimony refer to native pagination.

[30] Tr. at 56:25-57:11 (Smoak Cross) (May 19, 2021); *see generally id.* at 54:3-57:11; TIEC Ex. 6 at Bates 13.

[31] Tr. at 73:19-74:2, 77:7-9 (Brice Cross) (May 19, 2021).

[32] SWEPCO Ex. 6, Direct Testimony of Michael A. Baird at 48-49 (Baird Dir.).

[33] Tr. at 115:25-116:15 (Baird Cross) (May 19, 2021).

[34] *Id.* at 120:14-18.

[35] *Id.* at 121:9-15; Baird Dir. at 48-49.

expense, and federal income taxes associated the plant.[36] SWEPCO would thus not only recover all of its remaining investment in Dolet Hills in four years (rather than the 25-year period previously contemplated), but would recover up to four years of O&M and other expenses for a plant that it plans to retire less than a year after the effective date of rates in this case.

SWEPCO's proposal is inconsistent with Commission precedent and unreasonable. The ALJs properly rejected it. As discussed below, the ALJs' approach is appropriate given the facts of this case and should be adopted.

- **SWEPCO's proposal is inconsistent with Commission precedent.**

It is helpful to begin with a discussion of the Commission's recent treatment of another early retired plant, SWEPCO's own Welsh Unit 2. At the time that SWEPCO filed its 2012 rate case, Docket No. 40443, it had already announced that it would retire Welsh Unit 2 in 2016, more than 20 years earlier than previously anticipated.[37] In fact, SWEPCO had entered into a federal consent decree requiring it to retire Welsh Unit 2 no later than December 31, 2016.[38] In that case, SWEPCO requested that the recovery of Welsh Unit 2 be accelerated such that all of the undepreciated balance would be recovered through the new retirement date of 2016.[39] The Commission denied SWEPCO's request and maintained the existing useful life for Welsh Unit 2 of 2040.[40]

Subsequently, in Docket No. 46449, the Commission addressed the proper treatment of Welsh Unit 2 once it had been retired. As discussed in Section V.A.1 above regarding the Retired Gas-Fired Generating Units issue, the Commission found that SWEPCO's decision to retire Welsh Unit 2 was prudent, and that SWEPCO was entitled to recover its undepreciated investment in the

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[36] TIEC Ex. 4, LaConte Dir. at 6-7.

[37] *Id.* at 9.

[38] *Id.* (citing Consent Decree, *Sierra Club, et al. v. United States Army Corps of Engineers, et al.*, Civil No. 4:10-cv-04017-RGK (W.D. Ark. Dec. 22, 2011)).

[39] *Id.* (citing *Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 40443, Proposal for Decision (PFD) at 176 (May 20, 2013), *adopted by* Order on Rehearing (May 6, 2014)).

[40] *Id.* at 9-10 (citing Docket No. 40443, PFD at 177, adopted by Order on Rehearing at FoFs 198-99 (Mar. 6, 2014)).

plant.[41] However, the Commission denied SWEPCO's request to also earn a return on the remaining balance, reasoning that this would be improper under PURA because the plant was no longer used and useful, and that allowing a return of, but not on, the remaining investment struck the proper balance between the interests of ratepayers and shareholders with respect to a plant that was no longer providing service.[42] The Commission also removed the test year O&M expenses for the plant because it was retired.[43]

SWEPCO's proposal is inconsistent with both of these precedents and is also internally inconsistent. It is inconsistent with Docket No. 40443 because SWEPCO seeks to accelerate cost recovery based on an abrupt and significant change to the expected useful life of a generating plant prior to the plant's retirement, which treatment the Commission denied in that case. It is inconsistent with Docket No. 46449 because SWEPCO seeks to earn a return on the post-offset undepreciated balance of the plant and to recover its test year O&M and other expenses as part of its ongoing revenue requirement. And SWEPCO's proposal is internally inconsistent because it simultaneously seeks to treat Dolet Hills as an operational plant (by seeking a return and ongoing recovery of expenses based on the test year) and as a retired plant (by seeking a special ratemaking treatment relating to the impending retirement).

- **The ALJs recommendation is a just and reasonable solution under the circumstances.**

The ALJs' recommendation solves the problems with SWEPCO's proposal. SWEPCO would be permitted full cost recovery for the plant (including a return) while it is still providing service. However, recognizing the equities surrounding the impending retirement of the plant and other circumstances presented here, the ALJs would place the plant in a rider so that it may be treated as retired once it ceases providing service.[44] At that time, consistent with the above-discussed Commission precedent, the remaining net book value of the plant would be placed in a regulatory asset, with SWEPCO permitted a recovery of, but not on its investment.[45]

[41] PFD at 19-20.

[42] PFD at 20.

[43] TIEC Ex. 4, LaConte Dir. at 10 (citing Docket No. 46449, Order on Rehearing at FoFs 166-67).

[44] PFD at 56-57, FoF 58-61.

[45] *Id.*

SWEPCO takes issue with the ALJs' recommendation, but it is SWEPCO's proposal that is unjust and unreasonable. The abrupt retirement of Dolet Hills leaves a substantial undepreciated balance to be dealt with, as well as the question of how to treat O&M and other expenses for a plant that operated in the test year, but that will be retired less than a year after the commencement of the rate year (and only weeks—at most—after the final order issued in this case). SWEPCO's proposal would resolve these issues to the detriment of SWEPCO's current ratepayers by (1) extinguishing an excess ADFIT refund that is owed to ratepayers separate and apart from the retirement of the plant; (2) requiring ratepayers to provide a return on the post-offset balance for a plant that is no longer operational; and (3) requiring ratepayers to pay for a full year's worth of O&M and other expenses for the soon-to-be retired plant for as long as the rates set in this case will be in effect. The ALJs properly found that SWEPCO's proposal is inequitable to SWEPCO's current ratepayers.[46]

SWEPCO's chief complaint with the ALJs' recommendation is that the Commission's rule on post-test-year adjustments (PTYA) for retired plants requires that the plant be retired before the commencement of the rate year for the adjustment to be approved.[47] As an initial matter, TIEC notes that the ALJs would not disallow the entire test year cost of other service for the plant, which would be the usual outcome of a PTYA to reflect the retirement of a plant. As discussed, the ALJs' approach would allow SWEPCO full cost recovery through a rider for the time the plant remains in service. Further, the ALJs recognized that there is good cause[48] to treat the plant as they recommend.

As discussed in the PFD, the sheer size of the remaining undepreciated balance in the plant, combined with the timing of this rate case, supports a good-cause finding.[49] As TIEC witness Ms. LaConte testified, it is unusual for a plant to be retired this early (and abruptly) with such a substantial amount of remaining undepreciated investment.[50] And as noted by the ALJs, SWEPCO chooses when to file its rate cases, and it chose to file this rate case at a time that resulted in Dolet

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[46] PFD at FoF 64.

[47] SWEPCO's Exceptions at 11-12, 15-16.

[48] The Commission's rules specifically provide a good-cause exception 16 T.A.C. § 25.3(b).

[49] PFD at 51-52.

[50] TIEC Ex. 4, LaConte Dir. at 11-12.

Hills being operational during the rate year, but for no more than nine months.[51] This timing facilitates SWEPCO's argument that it is entitled to a return on the remaining balance of Dolet Hills because the plant will be operational during the rate year.[52] Notably, SWEPCO was not required to file a rate case under PURA and the Commission's rules until 2022,[53] and, in fact, a January 2020 internal presentation discussing rate recovery issues with respect to Dolet Hills shows that SWEPCO, at that time, was contemplating filing its Texas rate case in 2022, after Dolet Hills was expected to retire.[54] SWEPCO states that it did not time the filing of this case to achieve this tactical benefit, but regardless, as the ALJs put it:

> Had SWEPCO waited until its March 19, 2022 deadline to file, or even until sometime after July 2021, the beginning of the rate year (the relate-back date, 155 days after filing) would have fallen after the December 31, 2021 Dolet Hills retirement date, such that a post-test-year rate-base reduction would undisputedly have been allowed under Section 25.231(c)(2)(F)(iii)(II).[55]

Moreover, additional good-cause factors exist under the facts of this case, including the following considerations. First, the retirement of Dolet Hills should not be viewed in isolation, but rather as part of AEP's aforementioned strategy to retire coal-fired plants and replace them with renewable or natural gas resources.[56] This comports with AEP's self-imposed goal to be net zero carbon by 2050, to which it has tied long-term incentive compensation.[57] In this connection, SWEPCO is not only planning on retiring Dolet Hills early (along with the lignite mine that serves it), but also to retire the Pirkey power plant (and its related mine) in 2023, and the coal-related assets at Welsh Units 1 and 3 in 2028.[58] In total, Dolet Hills, Pirkey, and Welsh Units 1 and 3

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[51] Tr. at 71:11-72:1 (Brice Cross) (May 19, 2021).

[52] *Id.* at 70:23-71:4.

[53] *Id.* at 71:5-10.

[54] *Id.* at 69:13-70:22; TIEC Ex. 9 (HSPM). Mr. Brice stated at the hearing that this information was not HSPM. Tr. at 69:13-16 (Brice Cross) (May 19, 2021).

[55] PFD at 51.

[56] Tr. at 56:25-57:11 (Smoak Cross) (May 19, 2021); *see generally id.* at 54:3-57:11; TIEC Ex. 6 at Bates 013-015.

[57] TIEC Ex. 6 at Bates 011-015; Tr. at 52:10-53:21, 55:10-21 (Smoak Cross) (May 19, 2021); TIEC Ex. 5.

[58] Tr. at 73:19-74:2, 77:7-9 (Brice Cross) (May 19, 2021). SWEPCO has not yet decided whether it will convert Welsh Units 1 and 3 to gas. Tr. at 109:9-22 (Brice Redir.) (May 19, 2021).

have a remaining net book value (NBV) of $950 million total company, or approximately $350 million Texas retail.[59] Further, the mines associated with Dolet Hills and Pirkey have unrecovered fix costs of approximately $120 million, [60] bringing the total unrecovered costs associated with plants and related assets that SWEPCO plans to retire to $470 million on a Texas retail basis. These early retirements threaten to place a significant and ongoing burden on Texas ratepayers. Under the circumstances, it is critical that the Commission weigh the equities and reach a just and reasonable result in determining the proper treatment for Dolet Hills (as the ALJs have done).

Second, SWEPCO used a 2046 retirement date in justifying expensive environmental retrofits to Dolet Hills, which now comprise $47 million (total company) of the remaining net book value.[61] In the 2013 timeframe, SWEPCO and CLECO installed environmental retrofits at Dolet Hills.[62] These investments were approved as prudent by the Commission and included in rate base in Docket No. 46449.[63] Notably, the economic analysis that SWEPCO provided to the Commission in Docket No. 46449 to justify the decision to retrofit Dolet Hills assumed a 2046 useful life for the plant.[64] This was despite the fact that SWEPCO had proposed a 2026 useful life for Dolet Hills in its prior rate case, Docket No. 40443, on the grounds that there was only enough lignite reserves to run the plant until that year.[65] It is not equitable for ratepayers to be required to absorb the accelerated cost recovery SWEPCO proposes for assets that SWEPCO recently justified on the grounds that Dolet Hills would run until 2046.

In sum, and contrary to SWEPCO's contentions that the ALJs somehow eliminated a provision of the Commission's cost of service rule,[66] there is ample evidence for a good-cause

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[59] Tr. at 75:7-78:14 (Brice Cross) (May 19, 2021) (testifying that the remaining NBVs for DHPS, Pirkey, and Welsh Units 1 and 3 is $151 million, $212 million, and $587 million, respectively); TIEC Ex. 15; SWEPCO Ex. 16, Direct Testimony of Jason A. Cash Exhibit JAC-2 at 18 (Cash Dir.). As Mr. Brice testified, Texas's share is approximately 37 percent. Tr. at 75:19-25 (Brice Cross) (May 19, 2021).

[60] Tr. at 76:1-77:6 (Brice Cross) (May 19, 2021) (testifying that the unbilled fuel costs for the mines fueling DHPS and Pirkey are $131 million and $193 million, respectively); TIEC Ex. 15.

[61] TIEC Ex. 18; Sierra Club Ex. 9; Tr. at 130:23-131:17 (Baird Cross) (May 19, 2021).

[62] Tr. at 79:13-25 (Brice Cross) (May 19, 2021); Docket No. 46449, Order on Rehearing at FoFs 27-28.

[63] Tr. at 79:12-21 (Brice Cross) (May 19, 2021).

[64] *Id.* at 80:2-82:9; TIEC Ex. 18.

[65] TIEC Ex. 18; Tr. at 81:18-82:8 (Brice Cross) (May 19, 2021); Docket No. 40443, PFD at 173-74.

[66] SWEPCO's Exceptions at 13.

finding to support the ALJs' recommended treatment for Dolet Hills.

- **SWEPCO's remaining arguments are without merit.**

SWEPCO raises several other contentions in support of its properly rejected proposal on Dolet Hills. Each is misplaced.

SWEPCO complains that the ALJs' recommendation is asymmetrical.[67] In this connection, SWEPCO argues that it has made additional capital expenditures since its last rate case, and that these expenditures should be considered as "offsetting" the Dolet Hills investment because they have not yet been reflected in rate base.[68] As an initial matter, these investments are not part of SWEPCO's requested revenue requirement in this case, and thus have not been vetted. Nor has there been a general inquiry as to whether there have been other changes to SWEPCO's costs and revenues since the end of the test year that would reduce its cost of service. Further, SWEPCO's arguments fail to recognize that it has access to the newly adopted generation cost recovery rider (GCRR) mechanism, which allows a utility to begin recovering its investment in a generating facility on the day of commercial operation without accounting for any offsetting changes in the utility's other generating assets, including accumulated depreciation or retired plants.[69] SWEPCO's contentions regarding symmetry thus miss the mark.

SWEPCO also notes that no party contested the prudence of retiring Dolet Hills and that the PFD finds that this decision was prudent.[70] But the ALJs' recommendation on this issue does not turn on whether SWEPCO acted prudently in deciding to retire the plant. Indeed, this situation is similar to the one in Docket No. 46449, in which the Commission expressly found that SWEPCO acted prudently in retiring Welsh Unit 2, but nevertheless denied a return on the remaining undepreciated investment.[71] Notably, there is no requirement that utilities in Texas seek preapproval for the retirement of a plant, and, in its application SWEPCO provided scant evidence

[67] *E.g.* SWEPCO's Exceptions at 15.

[68] SWEPCO's Exceptions at 14-15.

[69] 16 T.A.C. § 25.248; *see also Rulemaking Related to Generation Cost Recovery Rider (GCRR)*, Proj. No. 50031, Order Adopting New §25.248 as Approved at the July 2, 2020 Open Meeting at 12-15 (July 7, 2020).

[70] SWEPCO's Exceptions at 11.

[71] Docket No. 46449, Order on Rehearing at FoFs 64, 68-71.

of the prudence of retiring Dolet Hills and did not explicitly request a prudence finding.[72] So it is unclear why Staff or an intervenor would have expended substantial resources in challenging the prudence of retiring a plant that has not even actually been retired yet.

Finally, SWEPCO argues that GAAP principles and "standard regulatory practice" call for the remaining Dolet Hills investment to be depreciated by 2021 (although SWEPCO acknowledges that its own proposal does not comport with these principles).[73] But SWEPCO's claimed standard regulatory practice is, with respect to an early retired plant, inconsistent with the Commission's treatment of Welsh Unit 2 in Docket No. 40443. In that case, the Commission denied SWEPCO's request to accelerate cost recovery to match SWEPCO's agreed 2016 retirement date, and instead used the previously existing assumption that the plant would be in service for more than 20 years beyond that in setting rates.[74] Further, the Commission has recognized that accounting does not dictate ratemaking treatment, as that is a function of the Commission's regulatory authority.[75] And, as reflected in a Conclusion of Law included in the PFD, the Commission's cost of service rule specifically provides that "other methods of depreciation may be used when the Commission determines such depreciation methodology is a more equitable means of recovering the costs of plant" than the Commission's usual straight-line-basis approach.[76]

For all of the forgoing reasons, and those discussed in the PFD, the ALJs recommended treatment for Dolet Hills should be adopted, and SWEPCO's Exceptions on this point rejected.

- **SWEPCO's identified "errors" in the Dolet Hills rider**

SWEPCO identifies several items it characterizes as errors in the Dolet Hills rider and associated number runs.[77] TIEC addresses several of the issues below.

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[72] *See generally* SWEPCO Ex. 1, Rate Filing Package Schedules & Workpapers at Petition; SWEPCO Ex. 4, Direct Testimony of Thomas P. Brice (Brice Dir.); SWEPCO Ex. 4A, Workpapers to the Direct Testimony of Thomas Brice (providing testimony from another jurisdiction as support of the prudence of retiring DHPS) (Brice Dir. Workpapers).

[73] SWEPCO's Exceptions at 16-18.

[74] TIEC Ex. 4, LaConte Dir. at 9.

[75] PFD at 17.

[76] PFD at CoL 13.

[77] SWEPCO's Exceptions at 19 to 26.

Amortization of Oxbow Investment

TIEC agrees with SWEPCO[78] that the Oxbow investment should not be included in the Post-Retirement phase of the rider, as TIEC's understanding is that SWEPCO recovers the amortization of this investment through fuel. Alternatively, the investment should be removed from fuel expense at the time of retirement to avoid double recovery. Any return that SWEPCO is recovering through base rates on this investment should cease as of the time of the plant retirement, however, consistent with the PFD's recommendation.[79]

True-up Mechanism

TIEC disagrees with SWEPCO[80] that a true-up mechanism is necessary or appropriate for the Dolet Hills rider, at least as to the Operational Plant Phase. Under the ALJs' recommendation SWEPCO would be permitted full cost recovery for the plant through a rider until the time of its scheduled retirement (December 2021).[81] The purpose of the rider during this Operative-Plant Phase is to mimic cost-of-service ratemaking during the time period that the plant is still operational.[82] Base rates are not trued-up, and SWEPCO has not identified any reason to true-up the rider during this phase.

Carrying Cost on the Dolet Hills Rider Post-retirement

In this section of its exceptions, SWEPCO argues that it should be entitled to recover carrying costs, at its Weighted Average Cost of Capital, on the undepreciated investment in Dolet Hills after it is retired.[83] For the avoidance of doubt, this is not an "error" in the PFD at all. SWEPCO is simply reiterating its core argument that it should be allowed to earn a return on its investment in a retired plant notwithstanding that the plant is no longer used and useful. The ALJs properly rejected that contention, which TIEC has addressed above with respect to both the Retired Gas-Fired Generating Units issue and the merits of the Dolet Hills issue. TIEC also notes that, in

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78 SWEPCO's Exceptions at 20-21.

79 PFD at FoF 60.

80 SWEPCO's Exceptions at 21.

81 PFD at 56-57, FoF 58-61.

82 PFD at FoF 59.

83 SWEPCO's Exceptions at 21-25.

addition to the fact that SWEPCO's request for carrying costs is contrary to Commission precedent, the good-cause factors discussed above support denying SWEPCO a return on the undepreciated Dolet Hills balance.

C. NOLC ADFIT and Excess ADFIT

TIEC supports Commission Staff's position on this issue.[84]

E. Regulatory Assets and Liabilities

1. Self-Insurance Reserve

The ALJs properly recognize that determining whether a self-insurance reserve shall be approved is dependent upon meeting the requirements of PURA and the Commission's rules. SWEPCO attempts to obfuscate the issue first by comparing its self-insurance proposal to self-insurance reserves established by other utilities.[85] But that comparison is not relevant to whether SWEPCO's proposal fails to satisfy the Commission's rules.[86]

As the ALJs highlighted, whether a self-insurance proposal will be approved by the Commission is predicated upon whether: "(1) the coverage is in the public interest; (2) the plan, considering all costs, is a lower cost alternative to purchasing commercial insurance; and (3) ratepayers will receive the benefits of the savings."[87] To satisfy each of these three prongs, the utility must "present a cost benefit analysis performed by a qualified independent insurance consultant."[88] The cost benefit analysis itself must "present a detailed analysis of the appropriate limits of self-insurance," among other requirements.[89]

SWEPCO notes that the ALJs recommended denying the self-insurance reserve in part because "SWEPCO did not present a specific commercial insurance quote as part of its cost-benefit

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[84] TIEC's Reply Br. at 8.

[85] SWEPCO's Exceptions at 34.

[86] *See* 16 TAC § 25.231(b)(1)(G); PURA § 36.064.

[87] PURA § 36.064(b).

[88] 16 TAC § 25.231(b)(1)(G).

[89] *Id.*

analysis."[90] In fact, the qualified independent insurance consultant, Mr. Wilson,[91] did not present a cost-benefit analysis including *any* number for the cost of insurance.[92]

Instead of satisfying the Commission's rules by presenting a cost-benefit analysis that compares all costs of self-insurance to all costs of commercial insurance, Mr. Wilson merely presented "generic cost categories"[93] and relied on his "understanding"[94] of self- and commercial insurance, which we learned at hearing was "probably" three or four years old.[95] Mr. Wilson then asserted a conclusory belief that commercial insurance is *always* more expensive than self-insurance, which is at odds with the premise behind the Commission's own rules.[96]

A purely theoretical, three- or four-years old analysis based on a general understanding is not sufficient to allow the Commission to find that the self-insurance reserve would be in the public interest.[97] Without a quantitative cost-benefit analysis or actual cost information, it is impossible for the Commission to determine that with consideration of *all* costs, self-insurance "is a lower-cost alternative than commercial insurance and the ratepayers will receive the benefits of the self-insurance plan," as required by 16 T.A.C § 25.231(b)(1)(G).

SWEPCO opines that "accruals to build and maintain the self-insurance reserve are *not* costs" and, therefore, the accruals for the self-insurance reserve cannot be compared to the cost of a commercial insurance plan.[98] SWEPCO then seems to antithetically recognize that there are

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[90] SWEPCO's Exceptions at 36.

[91] Tr. at 284:11-13 (Wilson Cross) (May 19, 2021).

[92] *Id.* at 284:16-17 (stating that Mr. Wilson's analysis "does not present a number for the cost of insurance").

[93] *Id.* at 288:23-289:3 (agreeing that the theoretical costs listed on page 11 of Mr. Wilson's direct testimony are "kind of generic cost categories").

[94] SWEPCO Ex. 28, Direct Testimony of Gregory S. Wilson at 12 (Wilson Dir.).

[95] Tr. at 290:20-201:1 (Wilson Cross) (May 19, 2021) ("I think the last time I remember getting a quote is probably three or four years ago.").

[96] *Id.* at 286:24-287:4. There would be no need for the Commission to require a cost-benefit analysis if Mr. Wilson were correct that self-insurance is always less expensive than commercial insurance. The fact that the Commission requires a cost-benefit analysis to be presented is premised upon the idea that commercial insurance must be less expensive than self-insurance in at least some instances.

[97] 16 T.A.C. § 25.231(b)(1)(G) ("The commission will approve a self-insurance plan to the extent it finds it to be in the public interest.").

[98] SWEPCO's Exceptions at 35 (emphasis in original).

costs associated with the self-insurance reserve when it says that "[c]osts are not incurred until storms occur that are charged against the reserve."[99] And the Commission's requirement that a qualified independent insurance consultant "demonstrate[] that . . . self-insurance is a lower-cost alternative than commercial insurance" contemplates that there are actual costs to establish and maintain a self-insurance reserve.[100] These costs can then be compared to a commercial insurance plan, as required by PURA and the Commission's Rules.[101] SWEPCO's claim that self-insurance accruals are not costs and cannot be compared to commercial insurance is unsupported and does not change the fact that SWEPCO did not present the required cost benefit analysis. The ALJs were right to deny the self-insurance reserve.

VI. RATE OF RETURN

A. Return on Equity

SWEPCO's requested return on equity of 9.6% is higher than necessary for it to attract capital on reasonable terms. As set out in TIEC's exceptions, the cost of capital for utilities is low and has only declined since SWEPCO's last rate case.[102] Based on these market conditions, the intervenor and Staff witnesses' recommend an ROE in the range of 7.60% to 9.35% for SWEPCO.[103] SWEPCO would have the Commission ignore this evidence and award it the same ROE it received in its last rate case approximately four years ago.[104] Indeed, in making this request, SWEPCO's primary tactic is to simply ignore the evidence of the market cost of capital in this case and invite the Commission to set its ROE based on an average of ROEs established for other utilities, based on different records, at other times.[105] The Commission should decline that invitation. SWEPCO also argues that the range used by the PFD (9.0% to 9.9%) was too low, relying on the testimony of its expert Mr. D'Ascendis.[106] But SWEPCO has that backwards; the

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[99] *Id.*

[100] 16 TAC § 25.231(b)(1)(G).

[101] *See id.*; PURA § 36.064.

[102] TIEC's Exceptions at 2.

[103] PFD at 103.

[104] Docket No. 46449, Order on Rehearing at FoF 158.

[105] SWEPCO's Exceptions at 40.

[106] SWEPCO's Exceptions at 41.

range is too high because the high end exceeds SWEPCO's current 9.6% ROE that was established in its last case, and there is no credible evidence that SWEPCO's risk has done anything other than decrease since then. Further, SWEPCO's reliance on Mr. D'Ascendis's analysis is misplaced as his models produced ROE estimates that were inflated, as the ALJs recognized in discarding the majority of his proposed range.[107] SWEPCO's Exceptions should be denied.

- **SWEPCO's reliance on ROEs set for other utilities is misplaced.**

SWEPCO argues that the average of the authorized ROEs established for the utilities in the proxy group justifies its request for a 9.6% ROE.[108] Specifically, SWEPCO's contention appears to be that this Commission should award SWEPCO an ROE at least as high as these averages to meet the minimum legal standards.[109] In other words, SWEPCO's argument is that the Commission should cede its authority to establish an appropriate ROE for SWEPCO based on the evidence and instead simply adopt an ROE based on the ROEs set for other utilities, by other regulatory authorities,[110] at other times. That is incorrect. The Texas Legislature directed this Commission to ensure that the rates of Texas utilities are just and reasonable,[111] and it is this Commission's mandate to determine the appropriate ROE that would provide SWEPCO a reasonable opportunity to earn a reasonable return.[112] Moreover, SWEPCO's implication that it would be unable to attract capital if its ROE is set to a lower level than the average of utilities used in the proxy group over the last four years is unsupported and meritless. Indeed, SWEPCO's sister company, AEP Texas has been able to attract capital on reasonable terms[113] notwithstanding that its authorized ROE is 9.4%,[114] which is lower than SWEPCO's proposed average (and SWEPCO's current ROE).

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[107] PFD at 144-146.

[108] SWEPCO's Exceptions at 39-40.

[109] *Id.*

[110] SWEPCO's proxy group is based mostly on utilities in other states. *See* SWEPCO Ex. 8 (D'Ascendis Dir.) at 20.

[111] PURA § 11.002.

[112] PURA § 36.051.

[113] As noted in TIEC's Exceptions, AEP Texas was recently able to get a $450 million 30-year bond at an interest rate of 3.45% in May. TIEC's Exceptions at 8.

[114] *Application of AEP Texas for Authority to Change Rates*, Docket No. 49494, Final Order at 2 (Apr. 6, 2020).

SWEPCO's reliance on an average authorized ROE for proxy group utilities suffers from another problem: it ignores trends in capital costs and even in authorized ROEs themselves. As explained in a footnote in SWEPCO's Exceptions, the authorized ROEs that SWEPCO relies on were set over the period from 2017 to 2021.[115] Capital costs for utilities have been persistently low and declining in this period, so looking backwards to ROEs set in the past will overstate the cost of capital under current conditions. Indeed, interest rates have decreased dramatically since 2017.[116] In fact, both 30-year Treasury yields and Aaa-rated corporate bond yields are currently more than 100 basis points lower than they were during Docket No. 46449.[117] Meanwhile, utility stock valuations remain robust and are at higher levels than the last several years and remain at significantly higher levels than historical averages, as evidenced by price-to-earnings, price-to-cash-flow, and market-price-to-book-value ratios.[118] As TIEC witness Mr. Gorman testified: "These strong valuations of utility stocks indicate that utilities have access to equity capital under reasonable terms at relatively low cost."[119]

Further, while SWEPCO relies on authorized ROEs for its argument, these too have declined in recent years. The average authorized ROE for electric utilities in 2017 was 9.68%, while the average in 2020 was 9.39%.[120] At the time intervenors submitted testimony in this case, the average in 2021 for vertically integrated utilities was 9.3%.[121] In an October 2020 report, Moody's noted this trend and stated that "[u]tility allowed ROEs are likely to continue to decline as low interest rates persist given the industry's relatively low risk business risk profile, strong monopoly characteristics and the aim of regulators to keep rates affordable."[122] Indeed, it is worth noting that, while 2020 was a turbulent year in capital markets given the onset of the pandemic,

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115 SWEPCO's Exceptions at 40, n. 120.

116 TIEC Ex. 3, Direct Testimony of Michael P. Gorman at 13 (Gorman Dir.).

117 TIEC Ex. 46. Docket No. 46449 was tried during 2017 and the Commission issued its order on ROE in early January 2018. Docket No. 46449, Order (Jan. 11, 2018).

118 TIEC Ex. 3, Gorman Dir. at 9-10 & MPG2 at 1-3.

119 *Id.* at 10.

120 *Id.* at 7.

121 Walmart Ex. 1, Direct Testimony of Lisa V. Perry at 11 (Perry Dir.).

122 TIEC Ex. 3B, Confidential Workpapers to the Direct Testimony of Michael P. Gorman at MPG Confidential WP 15 (Moody's Investors Service, 2021 Outlook Stable on Strong Regulatory Support and Robust Residential Demand (Oct. 29, 2020)) at 5 (Gorman Conf. Workpapers).

the evidence shows that utilities were able to navigate the market turmoil and that conditions are only expected to improve going forward.[123] For example, Moody's provided the following assessment in the same report:

> We expect the sector to continue to have strong access to capital markets, as was exhibited during the turbulent capital market environment in March in the wake of the initial coronavirus outbreak in the US. Debt balances have been higher than normal in 2020, as some utilities hold more cash for liquidity and many have opportunistically refinanced upcoming maturities and issued incremental debt to take advantage of low interest rates.[124]

Similarly, S&P has noted that the electric utility industry "generally performed well during the pandemic" and that it "generally had consistent access to the capital markets."[125] The evidence is clear that capital costs are low and declining, and that SWEPCO's request for the same ROE it was awarded four years ago is unjustified.

SWEPCO's reliance on ROEs set for other utilities in the past also implicates a structural problem with the way that utility ROEs are set: regulators tend to reduce authorized ROEs in lagging fashion when capital costs are declining. For example, as noted above interest rates have decreased by 100 basis points since 2017, but authorized ROEs have declined by far less than that in the same timeframe. The result is that the spread between authorized ROEs and interest rates (or the implied equity risk premium) is higher than it has ever been, as Moody's noted in its October 2020 report:[126]

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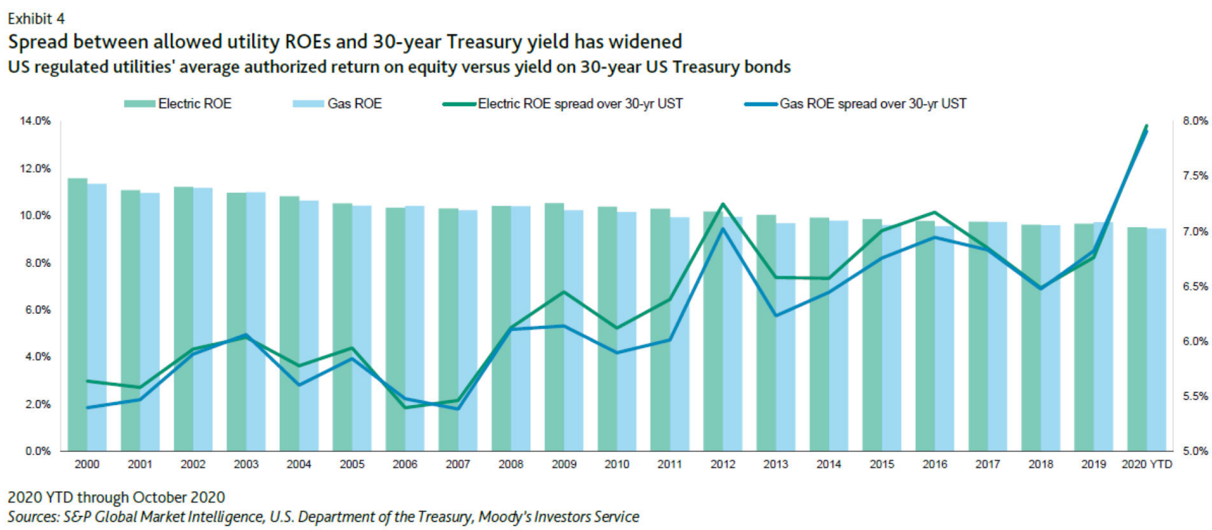
[123] TIEC Ex. 3, Gorman Dir. at 19-21.

[124] TIEC Ex. 3B, Gorman Conf. Workpapers at MPG Confidential WP 15 (Moody's Investors Service, *2021 Outlook Stable on Strong Regulatory Support and Robust Residential Demand* (Oct. 29, 2020)) at 3.

[125] TIEC Ex. 3, Gorman Dir. at 19-20 (citing S&P Global Ratings, *North American Regulated Utilities' Negative Outlook Could See Modest Improvement* (Jan. 20, 2021)).

[126] TIEC Ex. 3B, Gorman Conf. Workpapers at MPG Confidential WP 15 (Moody's Investors Service, *2021 Outlook Stable on Strong Regulatory Support and Robust Residential Demand* (Oct. 29, 2020)) at 5 (Gorman Conf. Workpapers).



In fact, even at the PFD's recommendation of a 9.45% ROE for, the implied equity risk premium would be nearly 7.5%,[127] which far exceeds the historical average since 1986 of 5.65%.[128] Notably, at the same time as regulators are establishing ROEs that result in this historically high spread over 30-year treasuries, utilities' business and operating risks have declined substantially given the proliferation of cost-recovery mechanisms.[129] This holds true for SWEPCO, which has access to a full suite of cost-recovery mechanisms, including the Transmission Cost Recovery Factor,[130] the Distribution Cost Recovery Factor,[131] and now, the Generation Cost Recovery Rider,[132] which was adopted since SWEPCO's last rate case[133] and allows non-ERCOT utilities to begin recovering their investment in a new power plant on the day it goes into commercial operation.[134] Thus, while regulators are awarding utilities with premiums over risk-free investments that are at all-time highs, utility business risk is far lower than it has been in the past.

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[127] 30-year Treasury yields were at approximately 2% at the time of the hearing in this case. *See* TIEC Ex. 46; Tr.at 1025:7-10 (Gorman Cross) (May 24, 2021). 9.45% (PFD ROE recommendation) – 2% (30-year Treasury yield) = 7.45% implied equity risk premium.

[128] TIEC Ex. 3, Gorman Dir. at Exhibit MPG-12.

[129] TIEC Ex. 3A, Workpapers to the Direct Testimony of Michael P. Gorman at WP 11 (*When "What Goes Up" Does Not Come Down: Recent Trends in Utility Returns*, Charles S. Griffey (Feb. 15, 2017)) at Bates 337-38 (Gorman Dir. Workpapers).

[130] 16 T.A.C. § 25.239.

[131] 16 T.A.C § 25.243.

[132] 16 T.A.C. § 25.248.

[133] Tr. at 1070:16-23 (D'Ascendis Cross) (May 24, 2021); PURA § 36.213.

[134] *Id.*

This further illustrates the problem with SWEPCO's inherently backwards-looking reliance on previously authorized ROEs; it fails to recognize that, in an era of persistently cheap capital costs, and low utility risks, it is imperative that regulators continue to reduce authorized ROEs.

- **SWEPCO's contentions regarding the PFD's recommend range are meritless.**

SWEPCO also argues that the PFD erred by limiting the high end of its recommended range to 9.9%, contending that it should be 10.2%, which SWEPCO states is the low end of Mr. D'Ascendis's rebuttal range "excluding his analyses involving the non-regulated proxy group and the PRPM."[135] SWEPCO fails to recognize that, based on the evidence in the record, the ALJs simply (and appropriately) disagreed with Mr. D'Ascendis's analyses to the extent that they indicated an ROE above 9.9%. Indeed, the ALJs specifically explained that they thought it appropriate to place greater weight on the ROE experts' constant growth Discounted Cash Flow (DCF) analyses, and that even Mr. D'Ascendis's results under that model were 8.43% (direct) and 9.42% (rebuttal).[136] In fact, as summarized in the PFD at length, the record is replete with evidence demonstrating that Mr. D'Ascendis's analyses are flawed.[137] SWEPCO also fails to address that the bottom end of the range proposed by opposing ROE witnesses was lower than the 9.0% used by the ALJs as the low end of their recommended range.[138]

Contrary to SWEPCO's contentions, a more appropriate modification to the PFD's range would be to remove the portion above 9.6%, SWEPCO's current ROE. As discussed throughout this section and in TIEC's exceptions, there is no credible evidence that SWEPCO's risks have increased since its last rate case, and in fact the evidence is clear that SWEPCO's risks (along with the utility industry as a whole) have decreased. Accordingly, using SWEPCO's current ROE as the high end of the range reflects a conservative approach. Making this adjustment to the PFD's range would result in a midpoint of 9.3%. While TIEC requests that the Commission set SWEPCO's ROE at Mr. Gorman's recommendation of 9.15%,[139] a 9.3% ROE would at least more

[135] SWEPCO's Exceptions at 38.

[136] PFD at 146.

[137] *See generally* PFD at 101-146; *see also* TIEC's Initial Brief at 32-42.

[138] The low end of the range submitted by Dr. Woolridge for CARD is 7.6%, while the low end submitted by TIEC's witness Mr. Gorman is 8.9%. *Id.* at 103.

[139] TIEC's Exceptions at 2.

reasonably capture SWEPCO's cost of capital under current market conditions.

VII. EXPENSES

A. Transmission and Distribution O&M Expenses

6. Allocated Transmission Expenses Related to Retail Behind-the-Meter Generation

The PFD properly rejects SWEPCO's unprecedented attempt to shift $5.7 million in transmission costs from its Arkansas and Louisiana jurisdictions to Texas. SWEPCO's Exceptions on this point largely repeat the arguments that were fully discussed and rejected in the PFD for the reasons stated therein.

Transmission costs are demand-related, and SWEPCO, until this case, allocated transmission costs between jurisdictions based on the actual demands each jurisdiction imposed on SWEPCO's transmission system at the time of the system peaks.[140] As described in the PFD, in this case SWEPCO proposed to take the actual demands each jurisdiction imposed on SWEPCO's transmission system, but then to add approximately 146 MW to the actual Texas demands.[141] That 146 MW represented the behind-the-meter self-supplied electricity of a single one of the hundreds of SWEPCO self-generators in all three jurisdictions.[142] The single customer that SWEPCO chose to add (Eastman Chemical) was in Texas, and adding the behind-the-meter self-supplied electricity of that Texas customer to Texas demands, while ignoring similar self-generators in Louisiana and Arkansas, resulted in SWEPCO's proposal that Texas customers pay for a far greater share of SWEPCO's transmission system than warranted by the actual jurisdictional demands. As stated in the PFD, "SWEPCO is applying one method to develop the Texas jurisdictional demand, and another method to calculate the Arkansas and Louisiana demands."[143] The PFD properly rejected SWEPCO's proposal to shift Arkansas and Louisiana costs to Texas customers.

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[140] Tr. at 1201-1203 (Aaron Cross) (May 25, 2021); PFD at 187-188.

[141] PFD at 187-188, 195.

[142] *Id.*

[143] PFD at 188.

SWEPCO's Exceptions argue that its jurisdictional allocation method is appropriate because SWEPCO included Eastman's self-supplied electricity—but not the self-supplied electricity of any of its other cogenerators and self-generators—in its monthly reports to SPP, which SPP used in developing Network Integration Transmission Service (NITS) charges.[144] That argument is unavailing for at least three reasons.

First, the costs that SWEPCO sought to shift to Texas customers through its unprecedented and discriminatory jurisdictional allocation included SWEPCO's entire transmission revenue requirement, not simply SPP's NITS charges. SWEPCO sought to use its inflated Texas allocator for jurisdictionally allocating the return on SWEPCO's transmission invested capital, SWEPCO's system-wide transmission depreciation expense, and SWEPCO's system-wide transmission operations and maintenance expense, among other things.[145] As the PFD carefully explains, SWEPCO proposed not simply a new allocation method for SPP-related costs, but a reallocation of *all* transmission costs, whether they were related to SPP or not.[146]

Second, while certain SPP personnel were urging SWEPCO to include retail self-supplied electricity in monthly load reports to SPP load, no one at SPP suggested that SWEPCO single out only one of its hundreds of self-generators for differential treatment. Rather, to the extent individuals at SPP were urging changes to SWEPCO's and other utility's methods for reporting load to SPP, they were urging the inclusion of *all* retail self-served load in *all* jurisdictions, including load that could never impose demands on SPP's system.[147] Whatever the validity of that new interpretation by certain SPP personnel, there is no basis whatsoever for singling out a single customer's load in a single jurisdiction for different treatment than the load of all other self-generators, and there is certainly no indication that anyone at SPP gave SWEPCO any directions whatsoever about how to allocate non-SPP costs.

Third, while one would have expected that SWEPCO would offer evidence in support of such a dramatic change, the PFD properly found that SWEPCO provided little support for its

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144 SWEPCO's Exceptions at 42-44.

145 TIEC Ex. 2, Supplemental Direct Testimony of Jeffry Pollock at 2 (Pollock Supp. Dir.).

146 PFD at 195.

147 PFD at 183.

unprecedented change in its jurisdictional allocation methodology and little indication that it was even making this change.[148] The PFD also properly noted that SWEPCO offered no explanation for why SWEPCO proposed to apply its new approach to costs that were unrelated to SPP.[149] It is striking that the party with the burden of proof in this case utterly failed to explain the basis for this new and unprecedented approach to the jurisdictional allocation of demand-related costs.

SWEPCO next argues that it has somehow "confirmed that the alleged harm of SWEPCO's reporting practices, if any, is immaterial."[150] SWEPCO provides little explanation for how it "confirmed" this, but its assertion is not supported in the record. In the first place, it is undisputed that SWEPCO's change in its jurisdictional allocation methodology would increase Texas's share of transmission costs by $5.7 million, an amount that hardly qualifies as immaterial. Second, the only evidentiary cite that SWEPCO offers for this proposition[151] does not say that the impact would be immaterial, it simply asserts that the Eastman's self-served load is greater than the combined self-served load elsewhere in SWEPCO's service territory. SWEPCO offers no explanation in its Exceptions of how an assertion that the other self-generators' combined load is less than 146 MW somehow makes the additional allocation to Texas customers "immaterial," and it offered no such evidence at the hearing.

Faced with the absence of evidentiary support for its discriminatory treatment of Texas, SWEPCO abandons any attempt to limit its argument to facts in the record, and asserts, without citation, that it has recently filed cases in Louisiana and Arkansas and it expects that those jurisdictions will accept SWEPCO's shifting of costs to Texas ratepayers.[152] SWEPCO fails to point out, however, that the issue of other jurisdictions' allocation of transmission costs was addressed at the hearing, and that SWEPCO admitted that it had never before proposed including self-served load in jurisdictional allocations in other states, let alone the self-served load of a single

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[148] PFD at 195.

[149] *Id.*

[150] SWEPCO's Exceptions at 44.

[151] *See* SWEPCO Ex. 52 at 12:19-21.

[152] SWEPCO's Exceptions at 46.

Texas customer.[153] That includes SWEPCO's recently concluded Arkansas rate case.[154] Thus, SWEPCO's proposal in this case would lead to the opposite of "trapped costs." Texas rates would be set, retroactive to March 18, 2021, based on SWEPCO's new proposal to shift costs to Texas ratepayers, despite the fact that Louisiana and Arkansas rates were not reduced to reflect that assumption in recent cases in those jurisdictions. That evidence is in the record; SWEPCO's speculation about what other jurisdictions may do in the future is not.[155]

The PFD properly finds that adding the self-supplied electricity of a single Texas customer to Texas demands while ignoring similar customers in other jurisdictions would result in unreasonably discriminatory rates for Texas customers.[156] That finding is well-supported by the evidence in this case, and SWEPCO's Exception on this point should be denied.[157]

X. REVENUE DISTRIBUTION AND RATE DESIGN

B. Rate Design and Tariff Changes

3. TIEC's LLP Rate Schedule and Reactive Power Issues

SWEPCO proposes to increase the Large Lighting and Power reactive demand charge by 29.4%.[158] As pointed out by TIEC witness Mr. Pollock, however, SWEPCO did not provide any

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[153] Tr. at 1197:7-17 (Aaron Cross) (May 25, 2021).

[154] *Id.* at 1194:18-1197:21.

[155] It should be noted that it is well-established that different jurisdictions may adopt different jurisdictional allocation methodologies. That is within each state's jurisdiction over retail rates, and it is a simply a result of utilities operating in multiple jurisdictions with different policies. *Entergy Texas, Inc. v. Nelson*, 889 F.3d 205, 209-10 (5th Cir. 2018) ("The potential for retail regulators to adopt different retail allocations of payments for multi-jurisdictional utilities has always existed . . . . As has long been recognized, when more than one jurisdiction is involved there is an inherent operating risk that one jurisdiction may allocate on a different basis and the allocations may not mesh perfectly. It is axiomatic that different regulatory bodies are not bound to apply the same ratemaking principles, and therefore, the possibility of such imperfection is inherent in this nation's dual system of retail and wholesale rate regulation.") (citation omitted).

[156] PFD at 195.

[157] While the section of the PFD to which SWEPCO excepts (Section VII.A.6) relates to a revenue requirement issue, SWEPCO includes a proposed finding in this section that would adopt its class cost allocation of the $5.7 million it attempted to shift from Arkansas and Louisiana to Texas. *See* SWEPCO's Exceptions at 46. Since the PFD rejected SWEPCO's proposed cost shift, there was no need to address allocation issues and rate-design issues relating to self-generators. TIEC notes, however that it and at least one other party vigorously disagreed with SWEPCO's class allocation proposal. *See* TIEC's In. Br. at 65-75 and Reply Br. at 39-49. If the Commission were to reverse the PFD recommendation on the jurisdictional allocation, it would also need to resolve the disputes concerning the proposed class allocation and SWEPCO's proposed new "Synchronous Self-Generation Load" rate.

[158] TIEC Ex. 1, Direct Testimony and Exhibits of Jeffry Pollock at 48 (Pollock Dir.).

support whatsoever for this increase in its application.[159] Accordingly, he recommended that no increase to the reactive demand charge be approved unless SWEPCO provided a study justifying the cost-based need for such an increase.[160] The ALJs agreed with TIEC's recommendation.[161]

In its exceptions, SWEPCO does not dispute that it performed no reactive-demand study to assess whether there was a cost-based reason to increase the reactive demand charge.[162] Instead, SWEPCO simply argues that the reactive demand charge is "encompassed within and is part of the overall increase."[163] But this is the same argument that the ALJs properly rejected.[164] And it is entirely circular. TIEC's point is that there is no cost-based reason to increase the reactive demand charge based on the overall increase that SWEPCO proposes in this case. Reactive power is a different type of power than real power,[165] and the purpose of a reactive demand charge is to recover costs associated with addressing customers with a low power factor.[166] SWEPCO has provided no evidence whatsoever that the current reactive demand charge is inadequate to recover the relevant costs associated with reactive power.

TIEC also notes that the vast majority of SWEPCO's Exceptions on this point contain no citations to the record whatsoever.[167] In any event, even SWEPCO's unsupported allegations would not change the fact that it has provided no cost-based reason to increase the reactive demand charge. SWEPCO has completely failed to meet its burden of proof on its proposed increase to this charge, and the PFD should be adopted on this point.

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[159] *Id.* at 49.

[160] *Id.*

[161] PFD at 310.

[162] SWEPCO's Exceptions at 52-53.

[163] *Id.* at 52.

[164] PFD at 310.

[165] *E.g.,* 16 T.A.C. § 25.278(e)(2)(T).

[166] For example, the Commission's rules define "Transmission service" to include "reactive power support." 16 T.A.C. § 25.5(139).

[167] SWEPCO's Exceptions at 52-53.

V. CONCLUSION

For the foregoing reasons, TIEC respectfully requests that the Commission deny SWEPCO's Exceptions as addressed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Benjamin B. Hallmark, Attorney for TIEC, hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 28th day of October, 2021 by facsimile, electronic mail and/or First Class, U.S. Mail, Postage Prepaid.

/s/ Benjamin B. Hallmark
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